IN THE HIGH COURT OF UTTARANCHAL AT NAINTIAL

WRIT PETITION NO. 1051 (MS) OF 2004

State Bank of India,
Branch Bhrigukhal,
District – Pauri Garhwal,
Through its Manager Mandan Ram,
S/o Thabel Lal. .....Petitioner.

Versus

1. Civil Judge (Sr. Div.), Pauri Garhwal.
2. Kalyan Singh, S/o Jigar Singh, R/o Village Kolasi, Post-Thagar, Distt.-Pauri Garhwal. .....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri D.S. Patni, Advocate for the petitioner and Standing Counsel for the respondent no. 1.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 30.07.2004 passed by the respondent no. 1.

Briefly stated, a decree for a sum of Rs. 44,615/- was passed in favour of the petitioner on 29.10.1991. Petitioner has moved an application for execution of the said decree, which was dismissed in default on 19.12.1997 for want of prosecution.

Petitioner has filed a fresh execution application, the same was dismissed. In the aforesaid execution application, respondent no. 2 filed his objection stating therein that the second execution application cannot be filed, which was allowed by the respondent no. 1 on 30.07.2004.

After hearing both the parties, I direct that in case, the petitioner files an application for restoration of the order dated 19.12.1997, the same shall be considered sympathetically and the matter shall be decided on merits.

The Apex Court has held in ***M.S. Grewal Vs. Deep Chand Sood (2001) 8 SCC 151*** as under:-

"Law Courts will lose their efficacy if they cannot possibly respond to the need of the society-technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

In view of that, the order-dated 30.07.2004 is quashed. Liberty is given to the petitioner to move an application for recalling the order-dated 19.12.1997. The presiding Officer shall hear the case on merits in view of the law laid down by the Apex Court in M.S. Grewal (supra).

It is expected that application for restoration shall be disp0sed of on merits within a reasonable period of four months.

Subject to the aforesaid, writ petition is disposed of. No. order as to costs.

(Rajesh Tandon, J.)

01.07.2006
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